

In the Matter of: :
: :
THE RUFF COMPANY, : HUDBCA No. 95-A-158-C19
: :
Appellant :
: :
Contract No. N129-92-286 :
: :

Benjamin T. Ruff, CRB
The Ruff Company
779 Third Avenue
Chula Vista, CA 92010

Pro se

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For the Government

RULING ON GOVERNMENT'S MOTION TO DISMISS AND ORDER

May 15, 1996

By letter dated July 12, 1995 but received by the Board on July 25, 1995, Appellant filed a notice of appeal regarding Real Estate Asset Management ("REAM") Contract No. N129-92-286, claiming, inter alia, sums due on the contract. Copies of the letter were also sent to various individuals, including a HUD contracting officer. On August 1, 1995, the Board, upon docketing the notice of appeal, ordered the contracting officer to issue a final written decision on any pending claims submitted by Appellant to the contracting officer arising from Contract No. N129-92-286. By letter dated August 18, 1995, the HUD contracting officer notified Appellant that Appellant's July 12, 1995 demand for payment of \$222,564 could not be considered because it had not been certified pursuant to Federal Acquisition Regulation (FAR) § 52.233-1(d) (2).

By letter to the Board dated November 10, 1995, Appellant filed an "amended complaint" and sent a copy of it to the contracting officer. Appellant's November 10, 1995 letter requested relief for: (1) "wrongful termination of property assignment" under the terms of the contract by failing to assign properties through the end of the contract; (2) wrongful award of an interim contract; (3) non-payment for work related to properties which remained in inventory; and (4) non-payment for certain "services performed." The total amount claimed was \$466,850, plus interest and an undetermined amount for legal fees.

On January 11, 1996, the Board received the Government's motion to dismiss. The motion seeks dismissal of this appeal for lack of jurisdiction because Appellant has failed to file a claim with the contracting officer before filing its appeal with the Board. By Order dated January 25, 1996, the Board granted Appellant leave to file its response to the Government's motion

to dismiss by February 7, 1996. The Board received a letter from Appellant dated February 1, 1996, which requested that the Board "refer to [Appellant's] letter and demand for payment dated November 10, 1995, in the amount of \$466,850"

Under the Contract Disputes Act of 1978, as amended (the "Act"), 41 U.S.C. § 601 et seq., a contracting officer's final decision, either in writing or a "deemed denial," is a jurisdictional prerequisite for a claim before a Federal agency board of contract appeals. 41 U.S.C. §§ 605(a), (c)(1) and (5). Contractor claims against the Government must first be submitted to the contracting officer for a decision before they may be considered by the Board. Solar Foam Insulation, ASBCA No. 46278, 94-1 BOA ¶ 26,288. For purposes of the Act, a claim requires: a written demand seeking, as a matter of right, payment of money in a sum certain, or an adjustment, or interpretation of contract terms. Reflectone, Inc. v. Dalton, 60 F.3d 1572 (Fed. Cir. 1995). Further, when a contractor's claim is for more than \$100,000, the contractor is required to certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor. 41 U.S.C. § 605(c); FAR § 52.233-1. Absent the submission of a properly certified claim to the contracting officer for a decision, the Board lacks jurisdiction over the claim. See Calista Enterprises, Inc., ASBCA No. 46013, 95-1 BCA ¶ 27,301.

The Government contends in its motion to dismiss that Appellant's failure to present its claims to a contracting officer for a final decision as required by 41 U.S.C. § 605(a) deprives the Board of jurisdiction over the appeal. The Government also asserts that 41 U.S.C. §§ 605(c)(4) and (5), which permit the Board to order the contracting officer to issue a decision on the claim and stay the proceedings pending such decision, should only be applied in cases where the claim has been previously submitted to a contracting officer.

In response to the Government's motion to dismiss, Appellant filed a letter dated February 1, 1996, in which it requested that the Board "refer to [its] letter and demand for payment dated November 10, 1995, in the amount of \$466,850" and to its "original complaint" dated July 12, 1995. Appellant's letter dated July 12, 1995, was addressed to the Board, not the contracting officer, but Appellant did send a copy of it to the contracting officer. The Government has attached to its motion to dismiss the affidavit of Tony Karpowicz, the HUD contracting officer for this contract, in which Karpowicz avers Appellant has failed to directly submit his claim to him for a final decision.

The Board's jurisdiction with respect to the Act is limited to claims first submitted to the contracting officer. Solar Foam Insulation, *supra*. Appellant's letters filed with the Board, copies of which may have been mailed to the HUD contracting officer, do not satisfy the requirement in the Act that a claim "shall be submitted to a contracting officer for a decision." 41 U.S.C. § 605(a). Advising the contracting officer of a notice of appeal filed with this Board is not the same as filing a claim with a contracting officer, the denial of which permits a contractor to pursue specific appellate rights as provided by the Act.

Even if the Board deems Appellant's letters to the Board dated July 12, 1995, and November 10, 1995, to have been properly submitted to the contracting

officer for purposes of the Act, Appellant has, nevertheless, failed to certify its claim to the contracting officer. Certification of claims in excess of \$100,000 is required before the contracting officer may issue a final decision. See 41 U.S.C. S 605(c). Appellant's failure to certify its demand for payment of \$466,850 to the contracting officer prevents the demand from being a claim for purposes of the Act. W.M. Schlosser Co. v. United States, 705 F.2d 1336 (Fed. Cir. 1983). Therefore, this Board lacks jurisdiction over this case for lack of certification of the claim, even if Appellant's letters to the Board are deemed to have also been filed with the contracting officer.

Appellant may meet the jurisdictional requirements of the Act by submitting a properly certified claim to the contracting officer for a final decision. In the event that the contracting officer denies Appellant's claim in whole or in part, or fails to issue a final decision as required by the Act, Appellant may then file a notice of appeal with the Board or request that the Board deem Appellant's claims denied as provided by §605(c) (5) of the Act.

Order

The Government's motion to dismiss for lack of jurisdiction is GRANTED. This appeal is dismissed without prejudice.

David T. Anderson
Administrative Judge
Concur:

Jean S. Cooper
Administrative Judge

Lynn J. Bush
Administrative Judge